REMARKS

The Applicants do not believe that examination of the response contained herein will result in the introduction of new matter into the present application for invention. Therefore, the Applicants, respectfully, request that the response contained herein be entered in and that the claims to the present application, kindly, be reconsidered.

The Final Office Action dated June 15, 2005 has been received and carefully, considered by the Applicants. Claims 1-60 are pending in the present application for invention. Claims 1-60 are rejected by the June 15, 2005 Final Office Action. Claim 50 is objected to due to a typographical error. The foregoing amendment to Claim 50 has corrected this over sight.

The Final Office Action further objects to what is referred to as an "anomaly". The objection states that it appears that the dependency of Claim 26 upon Claim 14, and the dependency of Claim 56 upon Claim 31, while not incorrect, appears not to be the dependency that is desired. The Applicants, respectfully, decline to alter the dependency to the claims.

In response to the Applicants' previous traversal of the holding of Office Notice by the Examiner, the Examiner cites col. 4, lines 52-56 of U.S. Patent No. 6,567,985, issued in the name of Ishii (hereinafter referred to as Ishii) for the equivalence between the number of frames and the passage of time. The Applicants would like to point out that this rejection formerly was an obviousness based on a combination of Dimitrova et al. with Yeo et al. The Applicants, respectfully, point out that this rejection no longer exists. The current rejection of Claims 11-12 and 41-42, is based on a combination of Marino et al. with Dimitrova et al. As discussed further *infra*, Marino et al. is not available as a reference either under the provisions of either 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is respectfully, traversed.

The Applicants further traverse the taking of Office Notice by the Examiner. The Examiner has taken the recitation for video source frames, and a predetermined number of video source frames out of context and attempts to view the recitation for a predetermined fraction or percentage of the video source frames out of context. The terminating of the extracting of keyframees when a predetermined fraction or percentage of the video source frames has occurred is not disclosed or suggested by Marino et al.,

Dimitrova et al. or Yco et al., either alone or in combination. Therefore, this rejection is traversed.

The Examiner made the June 15, 2005 Office Action final based on the assertion that Applicant's amendment necessitated a new ground(s) of rejection. The Applicant hereby asserts the finality of the June 15, 2005 Office Action is premature. The MPEP §706.07 details when a Final Rejection is proper on second action.

"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)."

The previous amendment submitted February 3, 2005 by the Applicants amended Claims 1 and 31 of the present application for invention. The amendments made were narrowing amendments and not broadening amendments. The Final Office Action dated June 15, 2005 includes a rejection under the provisions of 35 U.S.C §102(b) as being anticipated by U.S. Patent No. 6,473,095 issued in the name of Marino et al. and U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. The Examiner states that U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. is incorporated by reference into U.S. Patent No. 6,473,095 issued in the name of Marino et al. It should be noted that both of these references were cited as prior art references prior the amendment submitted February 3, 2005 by the Applicant. There is no reason why this anticipation rejection should not have been made earlier. The only rejections based on prior art that were formerly made against the claims to the present invention were based on obviousness. The previous amendment submitted February 3, 2005 by the Applicants were narrowing amendments and not broadening amendments; therefore, these amendments could not have been the cause for a new anticipation rejection where only obviousness rejections formerly existed. As previously stated, both references were already cited. This anticipation rejection was not caused by any action on the part of the Applicants. Accordingly, the holding of finality is premature.

The Applicants, respectfully, request that the Primary Examiner reconsider the holding of finality of the June 15, 2005 Office Action and withdraw the finality of the June 15, 2005 rejection.

The foregoing amendment to the claims has been made to fully respond to a Final Office Action, which finality is fully anticipated to be withdrawn because it is premature. The

Applicants, therefore, reasonably anticipate an opportunity to respond to a non-final office action, which response may include the rescinding of the changes made by the foregoing amendment.

The Final Office Action rejects Claims 1, 2 4-10, 14-17, 19-32, 44-47 and 49-60 are rejected under the provisions of 35 §U.S.C. 102(b) as anticipated by U.S. Patent No. 6,473,095 issued in the name of Marino et al. (hereinafter referred to as Marino et al.). and U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. (hereinafter referred to as Dimitrova et al.). The rejection states that Dimitrova et al. is incorporated by reference into Marino et al. The Applicants, respectfully, assert that the attempts to use Marino et al. as a reference for anticipation should fail. Marino et al. remained unpublished until issuance. This rejection is a rejection under the provisions of 35 §U.S.C. 102(b); which states in relevant part that a "person shall be entitled to a patent unless - b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States". Marino et al. issued as a patent on October 29, 2002, after the March 13, 2001 filing date of the present application for invention. As previously stated, Marino et al. remained unpublished until issuance. Therefore, Marino et al. is not available as a reference under the provisions of 35 §U.S.C. 102(b). Accordingly, this rejection is, respectfully, traversed.

The Final Office Action rejects Claims 3, 11-12, 33, and 41-42 are rejected under the provisions of 35 §U.S.C. 103(a) as being obvious over U.S. Patent No. 6,473,095 issued to Marino et al. (hereinafter referred to as Marino et al.), in view of U.S. Patent No. 6,137,544 issued to Dimitrova et al. (hereinafter referred to as Dimitrova et al.).

This rejection is a rejection under the provisions of 35 §U.S.C. 103(a); which states in relevant part that "(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in **section 102** of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made."

Under the provisions of 35 §U.S.C. 103(c), "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. As previously discussed in the response to the rejection under the provisions of 35 §U.S.C. 102(b), Marino et al. do not qualify as prior art under the provisions of 35 §U.S.C. 102(b). The Applicants, respectfully, assert that Marino et al. do not qualify as prior art under the provisions of any of the paragraphs of 35 §U.S.C. 102. The Applicants further assert that Marino et al. do not qualify as prior art under the provisions of any of the paragraphs of 35 §U.S.C. 103. Marino et al. was a pending, unpublished application at the time of filing for the present application for invention. Marino et al. was also commonly owned with the present application for invention at the time of filing for the present application for invention. Therefore, Marino et al. do not qualify as a prior art reference under any of the paragraphs of 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is, respectfully, traversed.

The Final Office Action rejects Claims 3, 11, 22, 33, 41, and 42 under the provisions of 35 §U.S.C. 103(a) as being obvious over Marino et al. in view of Dimitrova et al.. As previously discussed under the response to the rejection under the provisions of 35 §U.S.C. 103(a), Marino et al. do not qualify as a prior art reference under any of the paragraphs of 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is, respectfully, traversed.

Regarding Claim 11, 12, 41 and 42 the rejection asserts the holding of Office Notice that a predetermined fraction of the video source frames, and a predetermined number of video source frames are both well known and widely used techniques for determining the passage of time in an audio/visual program. The Applicants would like to point out that this rejection formerly was an obviousness based on a combination of Dimitrova et al. with Yeo et al. The Applicants, respectfully, point out that this rejection no longer exists. The current rejection of Claims 11-12 and 41-42, is based on a combination of Marino et al. with Dimitrova et al. and Yeo et al. As previously, Marino et al. is not available as a reference either under the provisions of either 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is respectfully, traversed.

The Final Office Action rejects Claims 13 and 43 under the provisions of 35 §U.S.C. 103(a) as being obvious over Marino et al. in view of Dimitrova et al. and further in view of U.S. Patent No. 6,219,837 issued to Yeo et al. (hereinafter referred to as Yeo et al.). As previously discussed under the response to the rejection under the provisions of 35 §U.S.C. 103(a), Marino et al. do not qualify as a prior art reference under any of the paragraphs of 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is, respectfully, traversed.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

By _____

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